Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-911

ADAMO WRECKING CO.,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 31, 1976
CERTIORARI GRANTED APRIL 4, 1977.

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
For the Eastern District of Michigan
Southern Division

Criminal Docket 5-80297

Title of Case

THE UNITED STATES

vs.

ADAMO WRECKING COMPANY

Vio: Title 42, USC, Section 1857c-7(c)(1)(B) and Title 42, USC, Section 1857c-8(c)(2) (failing to wet and remove firable [*sic*] asbestos material used to insu;ate [*sic*] boiler before demolition)

Date	Proceedings
1975	
Feb. 20	Superseding indictment (no warrants requested).
March 11	Deft.'s motion to dismiss superseding indictment. BA.
•	• • • • •
June 6	Memorandum opinion and order granting deft.'s motion to dismiss Count I and holding a decision as to Count II in abeyance, filed and entered. Pratt, J.
•	• • • • •
July 3	Notice of appeal, with proof of service.
•	• • • • •
1976	
Dec. 2	Mandate from CCA reversing the judgment of the District Court and remanding the case for further proceedings with opinion. DD 12/3/76.

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

Appeal from Eastern District of Michigan, S. D., at Detroit
Case No. 75-1967

• • • • •

No. Below: Criminal 75-80297.
Judge Below: Pratt.
Date of Judgment: June 6, 1975.
Notice of Appeal Filed: July 3, 1975.

• • • • •

Date	Filing-Proceedings
1975	
July 14	Copy Notice of Appeal.
•	• • • •
1976	
•	• • • •
Nov. 1	Judgment of the District Court reversed and case remanded (No costs taxed)
Nov. 1	Opinion by Edwards, J.
•	• • • •
Dec. 1	Mandate issued (No costs taxed).
Dec. 1	Opinion with mandate.
1977	
Jan. 16	Notice of filing petition for certiorari 12/31/76 (Sup. Ct. No. 76-911).
March 11	Certified copy of order of Supreme Court granting certiorari 4/4/77.

UNITED STATES DISTRICT COURT
Eastern District of Michigan
Southern Division

UNITED STATES OF AMERICA, *Plaintiff.* *vs.* ADAMO WRECKING COMPANY, *Defendant.*	Criminal No. 5-80297 Vio: 42 USC 1857c-7(c)(1)(B) 42 USC 1857c-8(C)(2)

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

Count One

On or about the 19th day of February, 1974, at 2612 Carter Street, also know as 8751 Linwood Street, in the City of Detroit, County of Wayne, within the Eastern District of Michigan, Adamo Wrecking Company, the defendant herein did knowingly cause the emission of asbestos from a four and one-half story commercial masonry building at the aforementioned location by failing to wet and remove firable [*sic*] asbestos material, used to insulate and fireproof a boiler in the basement of said building, before demolition of the load-supporting structural supports had begun; in violation of Title 42, United States Code, Section 1857c-7(c)(1)(B), and the rules and regulations promulgated thereto, 38 F. R. 8829 (April 6, 1973), 40 C. F. R. § 61.22(d)(2)(i).

Count Two

On or about December 26, 1973, at Detroit, within the Eastern District of Michigan, the Adamo Wrecking Company knowingly did make and cause to be made false and fictitious material statements and representations in a report to Mr. Francis T. Mayo, Regional Administrator, Region V. United States En-

vironmental Protection Agency, to wit: Adamo Wrecking Company stated and represented that a building located at 2612 Carter Street, also known as 8751 Linwood Street, did not contain firable [*sic*] asbestos materials, whereas in truth and in fact, as Adamo then knew, said building did contain such materials, all in violation of Title 42, United States Code, Section 1857c-8(c)(2), and the rules and regulations promulgated pursuant thereto, 38 F. R. 8829 (April 6, 1973), 40 C. F. R. § 61.22 (d)(1).

THIS IS A TRUE BILL

Foreman

RALPH B. GUY, JR.
United States Attorney

PETER J. KELLEY
Assistant U. S. Attorney

Dated: 2/20/75

UNITED STATES OF AMERICA
United States District Court
For the Eastern District of Michigan
Southern Division

UNITED STATES OF AMERICA, *Plaintiff,*	Indictment No. 5-80297
vs.	Vio: 42 USC 1857c-7(c)(1)(B)
ADAMO WRECKING COMPANY, *Defendant.*	42 USC 1857c-8(c)(2)

MOTION TO DISMISS SUPERSEDING INDICTMENT

Now Comes defendant, Adamo Wrecking Company, by and through its attorneys, and moves this Court to dismiss Counts I and II of the Superseding Indictment herein, stating as follows:

As to Counts I and II

1. The Indictment does not charge an offense against the United States for the reason that it omits an essential element of the criminal offense; to wit the emission of pollutants in violation of an emission standard required by the said act.

2. The Indictment does not charge an offense against the United States for the reason that the regulations promulgated pursuant to 42 USC § 1857c-7; to wit, 40 CFR § 61.22(d) do not constitute a standard for the emission of friable asbestos as required by statute.

3. The Indictment does not charge an offense against the United States for the reason that the Government neither has any evidence of friable asbestos emissions in violation of the statutory standard nor can it produce any such evidence at trial due to the absence of a standard for said emissions.

4. The Defendant is informed and believes that the government has not and will not be able to produce evidence of any "emission" whatsoever and the Indictment should therefore be dismissed.

5. The Indictment is unconstitutionally vague, ambiguous and indefinite and does not apprise defendant of the charges against it with sufficient specificity so that the defendant can adequately prepare to defend or determine what charge was made or intended by the Grand Jury in that:

(a) the Indictment purports to charge defendant with a violation of 40 CFR § 61.22(d), yet said regulation represents a work practice rather than a standard for the emission of friable asbestos as required by statute;

(b) the Indictment alleges a violation of § 1857c-7 but fails to specify which subsection thereof has been violated;

(c) the various terms, explanations, practices, and determinations required by 40 CFR § 61.22(d) are so vague that men of common intelligence must guess as to their meaning and would differ as to their application.

6. The Indictment does not charge an offense against the United States in that the Administrator exceeded his statutory authority in promulgating the regulations invoked in the Indictment.

7. The Indictment does not charge an offense against the United States because the Administrator failed to promulgate an emission standard for friable absestos as required by 42 USC § 1857c-7(b)(1)(B).

8. The Indictment does not charge an offense against the United States for the reason that the regulation purportedly promulgated pursuant to 42 USC § 1857c-7 represents an unauthorized dictate of the method by which buildings are to be demolished.

WHEREFORE, defendant Adamo Wrecking Company, prays that this Court dismiss Counts I and II of the Superseding Indictment.

As to Count II Only:

1. The Indictment does not charge an offense against the United States for the reason that the alleged violation of 42 USC § 1857c-8(c)(1)(2) is a nullity since there could exist no knowing failure to report something which is unconstitutionally vague, ambiguous, and indefinite.

WHEREFORE, defendant Adamo Wrecking Company, prays that this Court dismiss Count II of the Superseding Indictment.

Respectfully submitted,

DICKINSON, WRIGHT, MCKEAN & CUDLIP

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NOTATIONS INDICATING LOCATION IN PETITION OF OPINIONS OF COURTS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit may be found at pages A1 through A11, inclusive, of the petition.

The Memorandum Opinion and Order of the United States District Court for the Eastern District of Michigan, Southern Division, may be found at pages A12 through A47, inclusive, of the petition.